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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,069	05/29/2001	Ran Oz	5079P010	9133

8791 7590 12/16/2004

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EXAMINER	
DINH, KHANH Q	
ART UNIT	**PAPER NUMBER**
2151	

DATE MAILED: 12/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/870,069	OZ ET AL.	
	Examiner	Art Unit	
	Khanh Dinh	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 May 2001*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-135* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-135* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *5/29/01*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-135 are presented for examination.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 2, 4, 5, 7, 8, 48, 50, 51, 53, 54, 58, 59, 61, 63-70, 78, 91, 93-97, 99, 100, 104 and 106-111 of the instant application are rejected under the judicially created

doctrine of obviousness-type double patenting as being unpatentable over some claims of U.S. Patent Application Number 09/870,056.

Regarding claim 1, claim 1 of the U.S. Patent Application contains every element of claim 1 of the instant application and as such anticipate claim 1 of the instant application.

Regarding claim 2, claim 3 of the U.S. Patent Application contains every element of claim 2 of the instant application and as such anticipate claim 2 of the instant application.

Regarding claim 4, claim 7 of the U.S. Patent Application contains every element of claim 4 of the instant application and as such anticipate claim 4 of the instant application.

Regarding claim 5, claim 5 of the U.S. Patent Application contains every element of claim 5 of the instant application and as such anticipate claim 5 of the instant application.

Regarding claim 7, claim 22 of the U.S. Patent Application contains every element of claim 7 of the instant application and as such anticipate claim 7 of the instant application.

Regarding claim 8, claim 11 of the U.S. Patent Application contains every element of claim 8 of the instant application and as such anticipate claim 11 of the instant application.

Regarding claims 22-24, claims 49, 49 and 50 of the U.S. Patent Application contain every element of claims 22-24 of the instant application and as such anticipate claims 22-24 of the instant application.

Regarding claims 25-31, claims 6, 22, 11, 6, 8, 35 and 8 of the U.S. Patent Application contain every element of claims 6, 22, 11, 6, 8, 35 and 8 of the instant application and as such anticipate claims 6, 22, 11, 6, 8, 35 and 8 of the instant application.

Regarding claim 47, claim 56 of the U.S. Patent Application contains every element of claim 47 of the instant application and as such anticipate claim 47 of the instant application.

Regarding claims 48, 50, 51, 53, 54, 58, 59, 61, 63-70 and 78, claims 58, 62, 60, 63, 66, 72, 74, 77, 91, 92, 101-104, 104 and 76 of the U.S. Patent Application contain every element of claims 48, 50, 51, 53, 54, 58, 59, 61 and 63-70 of the instant application and as such anticipate claims 48, 50, 51, 53, 54, 58, 59, 61 and 63-70 of the instant application.

Regarding claim 91, claim 110 of the U.S. Patent Application contains every element of claim 91 of the instant application and as such anticipate claim 91 of the instant application.

Regarding claims 93-97, 99, 100, 104 and 106-111, claims 111, 114, 121, 113, 127, 126, 121, 145, 155-158, 158 and 159 of the U.S. Patent Application contain every element of claims 93-97, 99, 100, 104 and 106-111 of the instant application and as such anticipate claims 93-97, 99, 100, 104 and 106-111 of the instant application.

* A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). " ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

Claim Objections

4. Claims 42-46, 88-90 and 129-135 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim. See MPEP § 608.01(n). Correction is required.

Other References Cited

5. The following references cited by the examiner but not relied upon are considered pertinent to applicant's disclosure.

A) Noll et al, U.S. Pat. No. 6,377,998.

B) Eshet et al, U.S. Pat. No. 6,674,804.

C) Oz et al., U.S. Pat. No. 6,813,270.

E) Eifrig et al, U.S. Pat. No. 6,748,020.

F) Bishop et al., U.S. Pat. No. 6,377,782.

Conclusion

7. Claims 1-135 are rejected.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh Dinh whose telephone number is (571) 272-3936. The examiner can normally be reached on Monday through Friday from 8:00 A.m. to 5:00 P.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung, can be reached on (703) 272-3939. The fax phone number for this group is (703) 872-9306.

A shortened statutory period for reply is set to expire THREE months from the mailing date of this communication. Failure to response within the period for response will cause the application to become abandoned (35 U. S. C . Sect. 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(A).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305 -9600.



Khanh Dinh
Patent Examiner
Art Unit 2151
12/06/2004